



State of Washington  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
Central Purchasing Unit  
4500 10<sup>th</sup> Ave SE, • P.O. Box 45810 • Olympia, Washington 98504-5810

**REQUEST FOR QUOTE (RFQ)**

Requisition Number  
PR0918517

Title  
Walk-In Coolers For Naselle Youth Camp

Quote Due Date & Time  
October 08, 2009 at 3:00pm PST

Purchasing Coordinator Jena Farley  
Email [jena.farley@dshs.wa.gov](mailto:jena.farley@dshs.wa.gov)

---

**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

***THIS PROJECT IS FUNDED IN WHOLE OR IN PART BY FUNDS MADE AVAILABLE THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT***

“This contract will be paid for, in whole or in part, with Federal Stimulus funds. The federal government requires the state to report the number of jobs created and/or retained by stimulus-funded projects. If you are awarded a contract or grant as a result of this solicitation, you may recruit by any means you prefer, but you (and your sub-contractors, if any) must list and report any jobs retained or created with the WorkSource system (affiliated with the Employment Security Department). WorkSource will also assist by referring the winning contractor to pre-screened candidates. However, the contractor retains all hiring discretion.

For more information, contact the Employment Security Department’s ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or [ARRA@esd.wa.gov](mailto:ARRA@esd.wa.gov).”

Bidders are required to read and understand all information contained within this entire quote package, including the DSHS terms and conditions attached below. **The Department of Social & Health Services reserves the right to reject bids that propose alternate or additional terms and conditions.**

In support of the State’s economic and environmental goals, we encourage you to consider the following elements in responding to our bids. These are not a factor of award (unless otherwise specified in this document):

- Using environmentally preferable products and products that exceed EPA guidelines
- Supporting a diverse supplier pool, including small, minority, and women-owned firms
- Featuring products made or grown in Washington.

**PLEASE SUBMIT BIDS VIA EMAIL DIRECTLY TO THE PURCHASING COORDINATOR LISTED ABOVE PLEASE NOTE:  
THE SUBJECT LINE FOR EMAIL SUBMISSIONS SHOULD READ  
“WALK IN COOLER FOR NASELLE YOUTH CAMP”**

**2. SCOPE**

The purpose of this RFQ is to purchase two (2) walk-in coolers for Naselle Youth Camp.

**Delivery –**

- Delivery time is of the essence and may be a factor in making an award.
- Supplier guarantees delivery F.O.B. destination and installation within        (bidder to complete) days after receipt of order.

Purchaser/Ship to Location:

Print Bidder Name Here \_\_\_\_\_

### 3. PRE-BID CONFERENCE

A **mandatory** pre-bid conference to address solicitation requirements will be held at the time and location indicated below. If interpretations, specifications, or other changes to the solicitation are required as a result of the conference, the Procurement Coordinator will make amendments to the solicitation and provide those amendments by posting them on WEBS at [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs).

Assistance for disabled, blind or hearing-impaired persons who wish to attend is available with prior arrangement with the Central Purchasing (CPU). Contact the Procurement Coordinator identified on the face page of this Request for Quote.

**Pre Bid Date:** *October 6, 2009*  
**Pre Bid Time:** *10:00 am*  
**Pre Bid Location:** *Naselle Youth Camp*  
*11 Youth Camp Lane*  
*Naselle, WA 98638*

If you submit a Bid without having attended the mandatory pre-bid conference, it will be rejected as non-responsive. You and/or your company may continue to receive amendment notifications from the Purchasing Activity addressing specific changes to this solicitation even if you fail to attend the mandatory pre-bid conference. However, receipt of such notifications is not to be construed as a waiver of this attendance requirement or as a change in your eligibility status to submit a Bid.

### 4. BIDDER INFORMATION

Bidder further offers to furnish materials, equipment or services in compliance with all terms, conditions, and specifications herein including all amendments. Submitting this document constitutes complete understanding and compliance with the terms and conditions and certifies that all-necessary facilities and personnel are available and established at the time of bid submittal.

**If manufacturer is bidding please also include dealer contact information with this quote.**

_____ (Company Name)	_____ (Typed Name)
_____ (Address)	_____ (Title)
_____ (City) (State) (Zip)	_____ (Phone and Fax Numbers.)
_____ (Federal Tax Identification Number) <b>DO NOT PROVIDE SOCIAL SECURITY NUMBER</b>	_____ Email

_____ (signature)	_____
----------------------	-------

## 5. QUOTE SUBMITTALS

Req. Item	Description	Qty	Unit	*Unit Price	*Total Price
1.	<i>New, Custom Walk-In Coolers 10' x 8' x 7-8'H (to include removal/ disposal of old coolers and refrigeration and installation of new coolers)</i>	2	Each	\$	\$
<b>Subtotal</b>					\$
<b>Evaluation Net 30 days Prompt Payment Discount:</b>					%
<b>Other Prompt Payment Discount:</b>					<div>Days</div> <div>%</div>
<b>Total</b>					\$

- Price is to include all equipment, materials, delivery/shipping, and removal and installation labor charges.
- There will be no additional charges allowed after award. The price listed above is to be all inclusive of expenses related to this bid.

## 6. SPECIFICATION CHECKLIST (MUST BE COMPLETED AND SUBMITTED WITH QUOTE)

Item	Description	Check If As Specified	Describe Fully If Not As Specified Alternate specifications may be grounds for bid rejection
	<b>Walk In Coolers, New</b>		
1.	Custom Walk-In Coolers 10' x 8' x 7-8'H	<input type="checkbox"/>	
2.	36" x 78"H Hinged Door with plastic curtain	<input type="checkbox"/>	
3.	Vapor Proof Light Fixture	<input type="checkbox"/>	
4.	Light Switch with a pilot light	<input type="checkbox"/>	
5.	2" dial thermometer	<input type="checkbox"/>	
6.	Refrigeration equipment; Compressors are to be 208-230v/3ph	<input type="checkbox"/>	
7.	Water cooled condensing units; R22 refrigerant	<input type="checkbox"/>	
8.	Larkin Coil (or equal) w/expansion valve, thermostat, solenoid valve & shaded pole motors 208-230v/1ph	<input type="checkbox"/>	
9.	Minimum 4 year extended compressor warranty	<input type="checkbox"/>	

All electrical, plumbing, and concrete work (if needed) will be completed by Naselle Youth Camp.

# DSHS Terms and Conditions

## **DO NOT SUBMIT WITH YOUR BID**

### 7. SPECIAL TERMS AND CONDITIONS

The Standard Terms and Conditions as set forth in section 6 of this RFQ will govern any purchase resulting from this RFQ. The agency reserves the right to reject bids that propose alternate or additional terms and conditions.

### 8. STANDARD TERMS AND CONDITIONS (T'S & C'S)

The terms and conditions in this section apply to all purchase orders, invitations to bid, requests for proposals, and requests for quotations except as noted.

#### 1. ENTIRE AGREEMENT

This document, including all addenda and subsequently issued change notices, comprises the entire agreement between the State Of Washington, Department of Social and Health Services, heretofore referred to as the "State" or "DSHS", and the Contractor and shall be governed by the laws of the State Of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State Of Washington, County of Thurston. The state reserves the right to reject bids that propose alternate or additional terms and conditions.

#### 2. CONFLICT AND SEVERABILITY

**Conflict:** In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the state maximum benefits.

**Severability:** Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

#### 3. ANTITRUST

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the state any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to the state under an escalation clause.

#### 4. NONDISCRIMINATION

##### A. Employment:

Acceptance of this contract binds the Contractor to the Terms and Conditions of Section 601, Title VI, Civil Rights Act of 1964, as may be amended: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Unless exempted by Presidential Executive Order #11246, as may be amended or replaced and applicable regulations thereunder, Contractor shall not discriminate against any employee or applicant for employment.

##### B. Contracting:

Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

### 5. WORKERS RIGHT TO KNOW

Recently passed "right to know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this Purchase Order, IFB, RFQ, or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with:

- The identity of the hazardous material,
- Appropriate hazardous warnings, and
- Name and address of the chemical manufacturer, importer, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

### 6. GIFTS AND GRATUITIES

In accordance with RCW 43.19.1937 and 1939 and RCW 42.52.150 and 160, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business practices to another to refrain from submitting a proposal. Further RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW prohibits state officers or employees from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

**7. RIGHTS AND REMEDIES**

In the event of any claim for default or breach of contract, no provision in this document or in the bidder's offer shall be construed, expressly or by implication, as a waiver by the state of any existing or future right and/or remedy available by law. Failure of the state to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the state to insist upon the strict performance of the contract.

**8. INSTATE PREFERENCE-RECIPROCITY (This paragraph does not apply to request's for quotation's)**

Pursuant to RCW 43.19.702 the Department of General Administration has established a schedule of penalties applicable against firms submitting bids from states which grant a preference to their own in-state businesses. The penalties are listed below and apply only to bids received from the following states:

Alaska	5%
California *	5%
Hawaii	3%
Illinois	10% (coal only)
Iowa	5% (coal only)
Louisiana	7%
Montana	3%
New Mexico	5%
New York	3% (food only)
Ohio	5%
South Carolina	7% (only when price of single item does not exceed \$30,000)
South Dakota	5% (milk only)
Virginia	4% (coal only)
West Virginia	5%
Wyoming	5%

\* California is applicable only to small business firms certified for preference by the State of California and located in distressed areas and enterprise zones. Bidders from California must indicate on their bid whether certified as a small business under California Code, Title 2, Section 1892.12 at Section VIII, Attachment 1, Bid Information.

In determining the lowest responsible bidder, the Contract Administrator (CA) will add an amount equal to the above percentage to each applicable bid submitted. In no event shall such increase be paid to a contractor whose bid is accepted.

**9. PROTESTS**

Protests shall be filed and resolved in accordance with Washington Administrative Code (WAC) 236-48-141 through 143. Protests filed prior to award are to be addressed to the CA in charge of the bid. Protests filed after the award, and in accordance with above referenced WAC, are to be addressed to the Manager, DSHS Purchased Services Contracts.

**10. SAVE HARMLESS**

To the fullest extent permitted by law, Contractor shall indemnify, defend, and save harmless the state, agencies of the state, and all officers and employees of the state, from and against any and all claims for injuries or death, including claims by Contractor's employees, or for damages arising out of, resulting from, or incident to Contractor's performance or failure to perform the contract, or for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and services ordered. Contractor's obligation to indemnify, defend and save harmless shall not be eliminated or reduced by any alleged concurrent negligence of the state or its agencies, employees, and officers. Contractor waives its immunity under Title 51 RCW to the extent required to indemnify, defend, and save harmless the state and its agencies, officers, or employees.

---

**11. PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

**12. SUPERVISION AND COORDINATION**

Contractor shall:

- Competently and efficiently supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid to the state, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

**13. ADVERTISING**

Contractor shall not advertise or publish information concerning this contract in any form or media without prior written consent from the CA.

#### 14. SUBCONTRACTS/ASSIGNMENT

Contractor shall not subcontract or assign its obligations under this contract without the prior written consent of the CA. The Contractor shall be responsible to ensure that all requirements of the contract shall flow down to any and all subcontractors.

#### 15. TAXES, FEES AND LICENSES

Taxes: Where required by state statute or regulation, contractor shall pay for and maintain in current status and all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate. Sales tax shall not be included in bid pricing submitted.

Collection of Retail Sales Tax:

- In state suppliers: In general, in state suppliers engaged in retail sales activities within Washington State are required to collect and remit sales tax to Department of Revenue.
- Out-of-state suppliers: In general, out-of-state suppliers must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in Washington State is significantly associated with supplier's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the supplier either directly or by an agent or other representative:
  - a) Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
  - b) Maintains an in-state inventory or stock of goods for sale; or
  - c) Regularly solicits orders from customers located within state via sales representatives entering the state; or
  - d) Sends other staff into the state (e.g. product safety engineers, etc.) to interact with customers in an attempt to establish or maintain market(s); or
  - e) Other factors identified in WAC chapter 458-20.

Out-of-state suppliers meeting one of the above criteria must register and establish an account with the Department of Revenue (DOR). Refer to WAC 458-20-193 (7 through 9) or call Department of Revenue at (800) 647-7706. When out-of-state suppliers are not required to collect and remit "use tax", the agency is responsible for paying this tax, if applicable, directly to DOR.

Fees/Licenses: Prior to bid opening the Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments or charges and to immediately comply with said changes or regulations during the entire term of this contract.

Customs/Brokerage Fees: To be considered responsive, bid must include ALL customs duties, brokerage or import fees where applicable. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs. Failure to do so may subject contractor to liquidated damages as identified in this document and/or to other administrative actions considered appropriate.

#### 16. WARRANTIES

Product: Contractor warrants that all materials, equipment, and/or services provided under this contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the state shall not alter or affect the obligations of the Contractor or the rights of the state.

Price: Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.

Year 2000 Compliance Warranty: Contractor warrants fault free performance in the processing of date and date related data including, but not limited to calculation, comparing, and sequencing by all Equipment and Software provided pursuant to this Contract, individually and in combination, when used in accordance with the product documentation provided by the Contractor. Fault free performance shall include the manipulation of this data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user.

#### 17. LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment or services shall be free of all liens, claims, or encumbrances of any kind and if the state requests, a formal release of same shall be delivered to the state.

#### 18. DELIVERY

- A. Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the state. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The state reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation by the purchaser shall not waive the right to claim damage for such breach, nor preclude the purchaser from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.
- B. Terms: Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Where specific authorization is granted to ship goods FOB shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The purchaser reserves the right to refuse COD shipments.
- C. Location: All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in purchase order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

- D. Unauthorized: In no case shall Contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

## **19. INSPECTION AND REJECTION**

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser and/or the state at its option, may require the Contractor to:

- Repair or replace, at Contractor's expense, any or all of the damaged goods, or
- Refund the price of any or all of the damaged goods, or
- Accept the return of any or all of the damaged goods.

## **20. TITLE AND RISK OF LOSS**

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury or destruction shall not release Contractor from any obligation hereunder.

## **21. PERFORMANCE**

Acceptance by the purchaser of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

## **22. IDENTIFICATION**

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order or field order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

## **23. CHARGES FOR HANDLING**

No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

## **24. INVOICING**

Contractor shall provide an original and two (2) copies of invoices. Each invoice shall be submitted as required by the contract and shall reference the contract and field order or purchase order number. Invoices shall be properly annotated with applicable prompt payment discount(s).

## **25. PAYMENT**

Payment will be made by the state agency or political subdivision indicated on ordering document. Any bid that requires payment in less than thirty (30) calendar days need not be considered. Qualifying prompt payment discount will be considered in determining the apparent lowest responsible and responsive bid. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials or equipment received or for services rendered shall be made by warrant issued from the Washington State Treasury and redeemable in U.S. dollars. Unless otherwise indicated, the state's sole responsibility shall be to issue this warrant. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the contractor.

## **26. QUALITY STANDARDS**

Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, bidder expressly warrants product bid as at least equal in quality and performance. The state's acceptance of a product bid as an "equal" is conditioned on the state's inspection and testing after receipt. If, in the sole judgment of the state, the item is determined not to be an equal, the bid may be rejected or the product returned at bidder's expense and/or the contract canceled without any liability whatsoever to the state. Any bid containing a brand that is not of equal quality, performance or use specified must be represented as an "alternate" and not as an "equal"; failure to do so shall be sufficient reason to consider the bid nonresponsive.

## **27. DETERMINATION OF RESPONSIBILITY**

- A. During bid evaluation, the state reserves the right to make reasonable inquiry to determine the responsibility of any bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance, on-site inspection of bidder's, or bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid nonresponsive.
- B. During the contract term, should the contractor be determined to be in violation of federal, state, or local laws or regulations, the state reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the contract.

## **28. AWARD FACTORS**

- A. Criteria: State contracts shall be awarded to the lowest responsible and responsive bidder subject to the preferences provided by law. Award criteria shall include all factors identified in RCW 43.19.1911 and the contractual requirements provided herein. No MWBE preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.
- B. Rights Reserved (This subparagraph does not apply to request of quotations)  
Subject to the provisions of Chapter 69, Laws of 1996 (SSB 6572), the state reserves the right to:
  - 1. Waive any informality.
  - 2. Reject any or all bids, or portions thereof. WAC 236-48-094 allows the state to "accept any portion of the items bid" unless the bidder stipulates all or nothing on the bid.
  - 3. Reissue an IFB, RFQ, or RFP, or negotiate under provisions outlined therein.
  - 4. Award on an all or none consolidated basis taking into consideration reduction in administrative costs as well as unit bid prices.

## **29. SUPPLIER REGISTRATION**

Prior to award of a contract, any unregistered bidder may be required to complete a Supplier Registration Packet for placement on the state's supplier list.

## **30. CHANGES**

No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the CA as evidenced by issuance by the state of a contract change notice.

## **31. ADDITIONS OR DELETIONS**

The state reserves the right to add or delete items, agencies or locations, as determined to be in the best interest of the state. Added items, agencies or locations will be related to those on contract and additions or deletions will not represent a significant increase or decrease in size or scope of the contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid price margins, and will be evidenced by issuance of a written contract change notice from the SPO.

## **32. CONTRACT SUSPENSION**

The state may at any time and without cause, suspend the contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from the state.

## **33. BREACH, DEFAULT, TERMINATION**

- A. Breach: A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the state; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the state's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in the state's sole opinion renders the Contractor unable to perform any aspect of the contract.
- B. Default: A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.
- C. Termination for Convenience: The state may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.
- D. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the state shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
- E. Termination by Mutual Agreement: The state or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.
- F. Sanctions: Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, by RCW 39.19.090, or by other applicable laws.

## **34. OPPORTUNITY TO CURE DEFAULT**

- A. Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the state may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The state is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the state. The state may terminate the contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.
- B. Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the state may do one or more of the following:
  - 1. Exercise any remedy provided by law.



2. Terminate this contract and any related contracts or portions thereof.
3. Impose liquidated damages.
4. Suspend Contractor from receiving future Invitations for Bid.

**35. LEGAL FEES**

The Contractor covenants and agrees that in the event suit is instituted by the purchaser for any nonperformance, breach or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, he shall pay to the purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

**36. FORCE MAJEURE**

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.

**37. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW the State of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. Bidders may contact OMWBE at 360-753-9693 to obtain information on certified firms for potential subcontracting arrangements.

**38. ESTABLISHED BUSINESS**

To be considered responsive, contractor must, prior to commencing performance, or prior to that time if required by law or regulation (reference WAC Chapter 18.27), be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work as specified in the bid solicitation. All bidders must have Federal Tax Identifier Number as required by IRS regulations and Uniform Business Identifier Number required by Department of Revenue (800) 647-7706. Questions regarding specific licenses should be directed to Department of Licensing at (360) 664-1400.

The state reserves the right to require proof of said requirements including business references within ten (10) calendar days from the date of request.

**39. LOWEST COST PURCHASE AUTHORITY (THIS PARAGRAPH APPLIES ONLY TO MANDATORY USE TERM CONTRACTS)**

This contract is subject to RCW 43.19.190(2) & RCW 43.19.1905(7): which authorizes state agencies to purchase materials, supplies, services, and equipment of equal quantity and quality to those on state contract from non-contract suppliers, provided that an agency subsequently notifies the DSHS Purchased Services Contracts (PSC) Contract Administrator (SPO) that the pricing is less costly for such goods or services than the price from the state contractor.

If the non-contract supplier's pricing is less, the state contractor shall be given the opportunity by the state agency to at least meet the non-contractor's price. If the state contractor cannot meet the price, then the state agency shall purchase the item(s) from the non-contract supplier, document the transactions on the appropriate form developed by PSC and forwarded to the CA administering the state contract. If a lower price can be identified on a repeated basis, the state reserves the right to renegotiate the pricing structure.

**END OF TERMS AND CONDITIONS**